

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
EASTERN WASHINGTON REGION
STATE OF WASHINGTON

SPOKANE COUNTY, CITY OF SPOKANE,
AND SPOKANE AIRPORT BOARD,

Petitioners,

v.

CITY OF AIRWAY HEIGHTS,

Respondent,

and

BRIGITTA ARCHER,

Intervenor-Respondent.

Case No. 13-1-0007

FINAL DECISION AND ORDER

I. SYNOPSIS

The City of Airway Heights adopted Ordinance Nos. C-797 and C-798 to provide a conditional use process for multi-family residential development in the vicinity of Fairchild Air Force Base and Spokane International Airport. Spokane County, the City of Spokane, and the Spokane Airport Board filed a petition for review alleging the amended development regulations violated provisions of the GMA protecting military installations and airports from incompatible development. The Board finds and concludes the City of Airway Heights is not in compliance with the requirements of the Growth Management Act (GMA) set forth in RCW 36.70A.530, RCW 36.70A.510, RCW 36.70.547, and RCW 36.70A.200. The Board remanded the Ordinances and entered a Determination of Invalidity.

II. BURDEN OF PROOF AND STANDARD OF REVIEW

For the purposes of Board review of the comprehensive plans and development regulations adopted by local governments, the GMA establishes three major precepts: a presumption of validity; a “clearly erroneous” standard of review; and a requirement of deference to the decisions of local governments.

Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and amendments to them are presumed valid upon adoption:

Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

The statute further provides that the standard of review is whether the challenged enactments are clearly erroneous:¹

The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

In order to find the County’s action clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.”²

Within the framework of state goals and requirements, the Board must grant deference to local governments in how they plan for growth.³

In recognition of the broad range of discretion that may be exercised by counties and cities in how they plan for growth, consistent with the requirements of this chapter, the legislature intends for the board to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county’s or city’s future rests with that community.

¹ RCW 36.70A.320(3).

² *Dept. of Ecology v. PUD1*, 121 Wn.2d 179, 201 (1993).

³ RCW 36.70A.3201.

1 The burden is on Petitioners to overcome the presumption of validity and
2 demonstrate that any action taken by the County is clearly erroneous in light of the goals
3 and requirements of Chapter 36.70A RCW (the GMA).⁴ Where not clearly erroneous, and
4 thus within the framework of state goals and requirements, the planning choices of local
5 government must be granted deference.
6

7 **III. PROCEDURAL HISTORY**

8 The Petition for Review was filed on October 3, 2013. The Board granted a motion
9 to intervene by Brigitta Archer, one of the property owners in the area at issue. There were
10 no dispositive motions.
11

12 The Hearing on the Merits was held on April 28, 2014 in Airway Heights, Washington
13 with the Eastern Washington Regional Panel comprised of Presiding Officer Raymond L.
14 Paoletta and Board Members Chuck Mosher and Margaret Pageler. In attendance at the
15 Hearing on the Merits were: James McDevitt, representing Petitioner Spokane Airport
16 Board; James A. Richman, representing Petitioner City of Spokane; David Hubert,
17 representing Petitioner Spokane County; Stanley Schwartz, representing Respondent City
18 of Airway Heights; and Margaret Y. Archer, representing Intervenor Brigitta Archer.
19

20 **IV. BOARD JURISDICTION**

21 To invoke the Board's jurisdiction to review compliance with the GMA, a party with
22 standing must comply with the statute's procedural requirements:
23

- 24 a) file a petition for review that includes a detailed statement of issues
25 presented for resolution by the Board;⁵
26 b) file the petition for review within 60 days after publication by the legislative body
27 of the city or county;⁶ and
28 c) allege that the government agency is not in compliance with the requirements of
29 the GMA.⁷
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⁴ RCW 36.70A.320(2).

⁵ RCW 36.70A.290(1).

⁶ RCW 36.70A.290(2). In addition to the GMA, the Board also has jurisdiction to hear and determine certain petitions alleging noncompliance with the Shoreline Management Act and the State Environmental Policy Act.

⁷ RCW 36.70A.280(1)(a).

1 The Board finds and concludes that the Petitioners have standing and complied with
2 the GMA's procedural requirements to invoke the Board's jurisdiction. The Board has
3 jurisdiction to hear and decide the Comprehensive Plan and/or Development Regulation
4 issues presented for review in this case.
5

6 V. DISCUSSION AND ANALYSIS

7 On August 5, 2013, the City of Airway Heights ("Airway Heights") adopted Ordinance
8 Nos. C-797 and C-798.⁸ These Ordinances amended the City's zoning regulations and
9 maps to authorize the City's hearing examiner to approve as conditional uses, *inter alia*,
10 multi-family residential housing development on approximately 29 acres of commercially-
11 zoned land near the City of Airway Heights' southeastern boundary (the "Property").⁹
12 Conditional residential uses that may be approved in the "C-2 zone" include "Multi-Family
13 Residential" as part of an approved mixed-use development plan, and "Multi-Family
14 Residential" with a density range of 10-20 units per acre on properties as shown on a map
15 entitled "Commercial Zoned Properties Potentially Available for CUP MF Residential
16 Development."¹⁰
17
18

19 A petition for review was timely filed by Spokane County, the City of Spokane, and
20 the Spokane Airport Board. The petition alleged multifamily housing development at the
21 location authorized in the Ordinances would conflict with present and future operations of
22 Fairchild Air Force Base and Spokane International Airport in violation of various GMA
23 provisions.
24

25 The subject Property had previously been annexed into the City of Airway Heights
26 pursuant to a 2009 Interlocal Agreement Regarding Annexations ("Interlocal Annexation
27 Agreement").¹¹ Prior to Airway Heights' annexation of the Property, the Spokane County
28

29 ⁸ City of Airway Heights Ordinances C-797 and C-798 (passed Aug. 5, 2013) [attached as Ex. 1 to Petitioners'
30 Corrected Prehearing Brief filed Feb. 27, 2014].

31 ⁹ Ordinance C-797, Section 2, p. 4.

32 ¹⁰ Ordinance C-797, Section 2, p. 4 and attached Appendix A map constituting amendments to Airway
Heights Municipal Code § 17.11.030. Ordinance C-798 adopted a mixed-use overlay, development
standards, and a review and approval process, adding a new Chapter 17.37 to the Airway Heights Municipal
Code.

¹¹ Interlocal Agreement Regarding Annexations of Portions of the West Plains Urban Growth Area between
the City of Spokane, the City of Airway Heights, and Spokane County (Dec. 3, 2009) [attached as Ex. 4 to
Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

1 Hearing Examiner in 2008, after receiving comments from several agencies, denied an
2 application for a 124 unit residential apartment project on a portion of the Property
3 (hereinafter "Deer Creek Apartments").¹² The approximately 29-30 acres of land affected by
4 the currently challenged Airway Heights Ordinances C-797 and C-798 includes the Deer
5 Creek property that was the subject of the 2008 conditional use denial.¹³ In that 2008
6 denial, the Hearing Examiner determined *inter alia* that high density residential development
7 would be incompatible with aircraft approach and departure operations and would
8 jeopardize the future viability of Fairchild Air Force Base and Spokane International
9 Airport.¹⁴

10
11
12 **Issue No. 1:** Did Airway Heights violate the notice and consultation
13 requirements of RCW 36.70A.530 by adopting the Ordinances which authorize
14 development adjacent to Fairchild Air Force Base ("Fairchild") that is
15 incompatible with Fairchild's existing and future mission requirements, without
16 the formal notice and consultation required by the statute and despite receiving a
17 letter from Fairchild asking Airway Heights not to approve the Ordinances
18 because of safety and noise concerns?

19 **Issue No. 2:** Did Airway Heights violate the substantive requirements of RCW
20 36.70A.530 by adopting the Ordinances which authorize development adjacent to
21 Fairchild that is incompatible with Fairchild's ability to carry out its existing and
22 future mission requirements?

23 **Applicable Law**

24 RCW 36.70A.530 provides:

- 25 (1) Military installations are of particular importance to the
26 economic health of the state of Washington and it is a priority of
27 the state to protect the land surrounding our military installations
28 from incompatible development.
29 (2) Comprehensive plans, amendments to comprehensive plans,
30 development regulations, or amendments to development
31 regulations adopted under this section shall be adopted or
32 amended concurrent with the scheduled update provided in RCW

¹² Spokane County Hearing Examiner Findings of Fact, Conclusions of Law, and Decision (July 3, 2008) [attached as Ex. 2 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

¹³ Intervenor Archer's Pre-Hearing Brief – Corrected, pp. 5-6 (Mar. 24, 2014).

¹⁴ Spokane County Hearing Examiner Findings of Fact, Conclusions of Law, and Decision, p. 25 (July 3, 2008) [attached as Ex. 2 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

1 36.70A.130, except that counties and cities identified in RCW
2 36.70A.130(4)(a) shall comply with this section on or before
3 December 1, 2005, and shall thereafter comply with this section
4 on a schedule consistent with RCW 36.70A.130(4).

5 (3) A comprehensive plan, amendment to a plan, a development
6 regulation or amendment to a development regulation, should not
7 allow development in the vicinity of a military installation that is
8 incompatible with the installation's ability to carry out its mission
9 requirements. A city or county may find that an existing
10 comprehensive plan or development regulations are compatible
11 with the installation's ability to carry out its mission requirements.

12 (4) As part of the requirements of RCW 36.70A.070(1) each
13 county and city planning under RCW 36.70A.040 that has a
14 federal military installation, other than a reserve center, that
15 employs one hundred or more personnel and is operated by the
16 United States department of defense within or adjacent to its
17 border, shall notify the commander of the military installation of
18 the county's or city's intent to amend its comprehensive plan or
19 development regulations to address lands adjacent to military
20 installations to ensure those lands are protected from
21 incompatible development.

22 (5)(a) The notice provided under subsection (4) of this section
23 shall request from the commander of the military installation a
24 written recommendation and supporting facts relating to the use of
25 land being considered in the adoption of a comprehensive plan or
26 an amendment to a plan. The notice shall provide sixty days for a
27 response from the commander. If the commander does not submit
28 a response to such request within sixty days, the local
29 government may presume that implementation of the proposed
30 plan or amendment will not have any adverse effect on the
31 operation of the installation.

32 (b) When a county or city intends to amend its development
regulations to be consistent with the comprehensive plan
elements addressed in (a) of this subsection, notice shall be
provided to the commander of the military installation consistent
with subsection (4) of this section. The notice shall request from
the commander of the military installation a written
recommendation and supporting facts relating to the use of land

1 being considered in the amendment to the development
2 regulations. The notice shall provide sixty days for a response
3 from the commander to the requesting government. If the
4 commander does not submit a response to such request within
5 sixty days, the local government may presume that
6 implementation of the proposed development regulation or
7 amendment will not have any adverse effect on the operation of
8 the installation.

8 **Board Analysis**

9
10 In 2004 the Legislature made this finding:

11 The United States military is a vital component of the Washington
12 state economy. The protection of military installations from
13 incompatible development of land is essential to the health of
14 Washington's economy and quality of life. Incompatible
15 development of land close to a military installation reduces the
16 ability of the military to complete its mission or to undertake new
17 missions, and increases its cost of operating. The department of
18 defense evaluates continued utilization of military installations
19 based upon their operating costs, their ability to carry out
20 missions, and their ability to undertake new missions.¹⁵

21 To ensure that lands near military installations are protected from incompatible
22 development, amendments to comprehensive plans and development regulations should
23 not allow development that is incompatible with the military installation's ability to carry out
24 its mission requirements or to undertake new missions.

25 In *McHugh v. Spokane County*, the Eastern Washington Growth Management
26 Hearings Board said that failure to modify a proposal in response to an objection from a
27 military base commander is a violation of RCW 36.70A.530:

28 The County did not comply with RCW 36.70A.530, which requires
29 the County to protect the land surrounding our military installations
30 from incompatible development. . . . The language specifies that
31 amendments to a plan or regulations should not allow
32 development in the vicinity of a military installation which are
incompatible with the installation's ability to carry out its mission
requirements. The representative of the military base objected to

¹⁵ RCW 36.70A.530, Notes (emphasis added).

1 the location of the new urban development, but this did not
2 change the County's action.¹⁶

3 In the present case, the Board must determine whether Petitioners have adduced
4 sufficient facts and evidence to satisfy Petitioners' burden of proof to show that Ordinances
5 C-797 and C-798 allow development in the vicinity of a military installation that is
6 *incompatible* with the installation's ability to carry out its mission requirements. The City of
7 Airway Heights lies directly at the east and northeast of the end of the runway of Fairchild
8 Air Force Base.¹⁷

9
10 The record before the Board contains evidence relating to the incompatibility of
11 multi-family residential uses of the subject Property that was submitted in 2013 and was
12 available to the Airway Heights City Council prior to passing the Ordinances. The record
13 also contains evidence relating to the incompatibility of multi-family residential uses of the
14 subject Property from a 2008 Spokane County Hearing Examiner review process and
15 decision to deny the application for Deer Creek Apartments (Phase 2)¹⁸ on part of the
16 subject Property. The Board finds this evidence has probative value regarding compatibility
17 of residential uses with the operations of the base and airport and was also available to the
18 Airway Heights City Council prior to passing the Ordinances.

19
20 Petitioners assert that the following evidence from the identified agencies shows the
21 Ordinances allow incompatible development:

22 **Fairchild Air Force Base:**

23
24 Based on the 1995 Fairchild AFB (FAFB) Air Installation
25 Compatible Use Zone (AICUZ) Study, the highlighted parcel on
26 the attached C-2 map is located in the 65-70 Ldn Noise Zone.
27 Based on our 2007 AICUZ study, the property is now outside of
28 the 65 Ldn contour line. This change demonstrates that noise
29 zones expand and contract as missions change. Unfortunately,
we cannot predict future noise zones; however, we do know that

30 ¹⁶ *McHugh v. Spokane County*, EWGMHB Case No. 05-1-0004, FDO p. 14 (Dec. 16, 2005).

31 ¹⁷ Memorandum of Understanding Regarding Implementation of the Joint Land Use Study for Fairchild Air
32 Force Base (JLUS), p. 1 (August 2, 2012) [attached as Ex. 7 to Respondent City of Airway Heights Pre-
Hearing Brief (May 25, 2014)].

¹⁸ The hearing examiner decision related to Phase 2 of Deer Creek Apartments. The record indicates Phase 1
of Deer Creek Apartments was permitted due to vesting and became a nonconforming use before the
developer applied for Phase 2. Spokane County Hearing Examiner Findings of Fact, Conclusions of Law, and
Decision (July 3, 2008) [attached as "Ex. 2 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

1 the highlighted parcel will be susceptible to aircraft noise into the
2 foreseeable future, from both FAFB and Spokane International
3 Airport. This fact was highlighted in the 2009 Joint Land use Study
4 (JLUS). As the JLUS Implementation Steering Committee
5 collaborated with Airway Heights in the development of the C-2
6 map, these parcels were identified as potentially incompatible for
7 high-density residential development. . . . [W]e renew our
8 concerns originally expressed in 2008 regarding the 25302.xxxx
9 series of parcels identified in the C-2 amendment and recommend
10 they be removed from consideration for multi-family residential
11 development. The highlighted area is within Military Influence
12 Area 3/4 of the JLUS and we are concerned about increasing the
13 residential density in an area so close to where our military jet
14 aircraft fly instrument approaches to our runway. . . . Those
15 parcels will be located between two major airport runways
16 (Fairchild and SIA) with substantial jet aircraft operation. Noise will
17 be a factor as both airports operate 24 hours a day. While sound
18 mitigation techniques can be used during construction, we
19 strongly do not recommend increasing residential development in
20 that area. Safety is also a factor worth considering and the close
21 proximity to the approaches of the two runways would increase
22 the risk to the residents in the event of a catastrophic aircraft
23 accident.¹⁹

24 Based on the 1995 Fairchild AFB Air Installation Compatible Use
25 Zone (AICUZ) Study, the subject property is located in the 65-70
26 Ldn Noise Zone. Based on Fairchild's 2007 AICUZ study, the
27 property is now outside the 65 Ldn contour line. This
28 demonstrates that noise zones expand and contract as the
29 mission changes at Fairchild AFB. Unfortunately, we cannot
30 predict Fairchild's future noise zones; however, we do know that
31 the subject property will be susceptible to aircraft noise for the
32 foreseeable future. Therefore, we do not recommend the
construction of additional apartments in this area.²⁰

¹⁹ Letter from Commander of Fairchild Air Force Base to Airway Heights City Planner (July 3, 2013; emphasis added) [attached as Ex. 10 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

²⁰ Letter from Deputy Base Civil Engineer, Fairchild Air Force Base to Spokane County Dept. of Building & Planning (April 14, 2008; emphasis added) [attached as Ex. 5 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014]. The Board notes that this 2008 letter was sent to Spokane County to comment on the proposed permitting of Deer Creek Apartments (Phase 2), prior to annexation of the subject property by the City of Airway Heights. Deer Creek Apartments (Phase 2) was disallowed by the county hearing examiner in 2008. Airway Heights Ordinance C-797 authorizes the hearing examiner to approve, as a conditional use, multi-family residential development on approximately 30 acres of Property, a portion of which is the same land as the previously denied Deer Creek Apartments (Phase 2).

1 **Federal Aviation Administration (“FAA”):**

2 [W]e consider the proposed apartment complex as an
3 incompatible land use, because it is located within the “area of
4 influence” of two major airports, and located in a potential
5 cumulative noise impact area.

6

7 As you are already aware, aircraft approaching either/both
8 Spokane International Airport’s future Runway 23 and Fairchild Air
9 Force Base could be expected to fly over high-density residential
10 development in this area at low altitudes in accordance with
11 standard operating procedures, and in significant numbers. The
12 proposed residential area could be subjected to considerable
13 “single-event” noise impacts from aircraft over flight. These types
14 of noise impacts are particularly annoying at nighttime, when
15 residents are trying to sleep. Significant noise can also be
16 expected from aircraft taking-off on proposed Runway 5-23,
17 potentially over areas with large concentrations of
18 people/residential areas.

19 In addition, there would also be visual (perceptual) impacts from
20 aircraft operating into and out of the airport. While current
21 operations are acceptable over the presently largely vacant land,
22 it would be disconcerting to many people on the ground in this
23 area of proposed residential development, due to a perceived
24 hazard of low-flying aircraft.

25 That is one of the main reasons that residential developments,
26 with large concentrations of people, are strongly discouraged
27 under airport traffic pattern areas – “area of influence”. Although
28 the frequency of aircraft accidents is comparatively very low, the
29 numbers of aircraft using the concentrated airspace of airport
30 approach areas, together with the complexities of take-off and
31 landing operations during various weather conditions, does mean
32 that accidents are proportionately higher in those areas than in
other locations further away from the airport.

33

34 Permitting high density residential uses weakens existing
35 protection for the airport, the flying public, and the future residents
36 by allowing incompatible development and potential hazards
37 closer to the critical phases of aircraft approach and departure
38 operations.²¹

²¹ Email comments from Spokane International Airport Director submitted to Spokane County Hearing Examiner, including comments from FAA Regional Office (April 18, 2008; emphasis added) [attached as Ex. 6 to Petitioners’ Corrected Prehearing Brief filed Feb. 27, 2014].

1 **Spokane County Hearing Examiner:**

2 As indicated by the FAA, Spokane International Airport, WSDOT-
3 Aviation, the City of Spokane, and Greater Spokane Incorporated;
4 and by the Board of County Commissioners in its recent
5 amendments to the LI zone; the approval of high density
6 residential development on the site would weaken existing
7 protection for the airport and Fairchild AFB, the flying public and
8 future residents, by allowing incompatible development and
9 potential hazards closer to the critical phases of aircraft approach
and departure operations; and would jeopardize the future viability
of such facilities. . . .

10 The application, even as conditioned, is generally not compatible
11 with other permitted uses in the area, and will be materially
12 detrimental to the public welfare; and should be denied pursuant
13 to Section 14.404.000 of the County Zoning Code.²²

14
15 **Washington State Court of Appeals:**

16 ¶39 The unchallenged facts establish that the Deer Creek site will
17 be subject to airport noise for the foreseeable future and that the
18 noise impact zones for FAFB expand and contract as the mission
19 of FAFB changes. Findings of fact also establish that a multifamily
20 development on the Deer Creek site would adversely impact the
21 layout, length, and orientation of a proposed runway for SIA and
will jeopardize current and future SIA operations.

22 ¶40 The Federal Aviation Administration (FAA) expressed concern
23 that the proposed development would be located within the “ ‘area
24 of influence’ ” of two major airports and in a potential cumulative
25 noise impact area for both airports. The FAA was also concerned
26 about the volume of aircraft approaching SIA or FAFB that would
27 fly over high-density residential development at low altitudes,
28 subjecting the residents to considerable single event noise
29 impacts. According to the FAA, “permitting high density residential
30 uses, or high concentrations of residential use, within the vicinity
31 of the airport weakens the existing protection for the airport, the
32 flying public and future residents; by allowing incompatible
development and potential hazards closer to the critical phases of
aircraft approach and departure operations.” The FAA also
contended that these actions “would violate written assurances

²² Spokane County Hearing Examiner Findings of Fact, Conclusions of Law, and Decision (July 3, 2008; emphasis added), p. 25 [attached as “Exhibit 2” to Petitioners’ Corrected Prehearing Brief filed Feb. 27, 2014].

1 and contractual commitments given by the City and County ... to
2 the federal government to protect the airport [and] could
3 jeopardize the receipt of future federal grants.”

4 41 Based on the unchallenged findings, there are sufficient facts
5 to support the hearing examiner's conclusion that the conditional
6 use would be detrimental to the public health, safety, or general
7 welfare.²³

8 **Spokane International Airport:**

9 As part of the approval process for these proposed amendments,
10 the City of Airway Heights should provide specific evidence as to
11 how the proposed amendments are consistent with the Fairchild
12 Air Force Base Joint Land Use Study and the Master Plan for
13 Spokane International Airport (Airport). . . .

14 . . . A key component of the staff recommendation and Board
15 approval of the JLUS relates to the measure calling for no new
16 residential development within the 65 DNL contour or higher. The
17 action that Airway Heights is proposing is inconsistent with JLUS.
18 The proposed action disregards published guidance which
19 identifies residential development as incompatible in areas of 65
20 DNL and higher which is inconsistent with appropriate land use
21 planning doctrine.

22 While there are provisions for noise attenuation called for to
23 achieve compatibility in the 65 DNL to 70 DNL contour, it is
24 important to note that sound attenuation is typically installed as a
25 remedial mitigation measure to achieve some improved livability
26 for persons located in established residential dwellings and is not
27 generally recognized as an enabling mechanism to allow for
28 encroachment of incompatible use in areas of 65 DNL and higher
29 noise exposure. Sound insulation will not resolve complaints
30 about other overflight impacts such as landing lights, vibration,
31 dust, fumes and interference with electronic devices, etc. and will
32 obviously not permit the enjoyment of outdoor activities in these
areas by residents.²⁴

31 **Greater Spokane Incorporated:**

²³ *Deer Creek Developers, LLC v. Spokane County*, 157 Wn. App. 1, 17-18 (2010), review denied 170 Wn.2d 1021 (2011) [emphasis added].

²⁴ Letter from Spokane International Airport to Airway Heights City Planner (May 9, 2013; emphasis added) [attached as Ex. 14 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

1 We are greatly concerned that isolated decisions, such as the one
2 under consideration, are being made without adequate
3 consideration of long term impacts. Just as was noted by
4 Fairchild Air Force Base in their previously delivered comments,
5 we believe this property “will be susceptible to aircraft noise for
6 the foreseeable future.” We also concur with Spokane
7 International Airport, who has repeatedly voiced concern about
8 the impact this project will have on both its current and future
9 operations. . . . The FAA, too, has provided strong language
10 citing its opinion that this project is “incompatible land use.” . . .
11 We believe that allowing this incompatible use to proceed will
12 create a precedent that will significantly complicate future actions
13 to prevent encroachment. Fairchild Air Force Base and Spokane
14 International Airport are simply too important to allow them to be
15 “boxed in.”²⁵

16 The Deer Creek site is part of the approximately 29 acre Property rezoned by the
17 Ordinances, and Airway Heights was aware of the opposition of the Fairchild Base
18 Commander and Department of the Air Force to residential development at Deer Creek.
19 Nevertheless, Airway Heights prepared its own noise contours and amended its zoning
20 code to allow multifamily development as a conditional use.

21 The conditional use permit calls for current noise level studies, with sound insulation
22 required at certain noise thresholds. By focusing on noise contours determined at the time
23 of project application, the Ordinances fail to make allowances for future mission changes or
24 the use of different aircraft at FAFB.

25 The “unchallenged facts” according to the Court of Appeals, are “that the noise
26 impact zones for FAFB expand and contract as the mission of FAFB changes.”²⁶ That is,
27 FAFB may accommodate over time different aircraft, operating in different alignments,
28 unless its flexibility to support new missions is limited by incompatible land uses.

29 Appendix A to challenged Ordinance C-797 is a map showing Fairchild Air Force
30 Base sound contours. This map shows the subject Property as located within the 65 dB to
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²⁵ Letter from Greater Spokane Inc. to Spokane Dept. of Building and Planning (April 18, 2008; emphasis added) [attached as Ex. 7 to Petitioners’ Corrected Prehearing Brief filed Feb. 27, 2014].

²⁶ *Deer Creek*, 157 Wn. App. at 17-18.

1 70 dB sound contours.²⁷ Since sound levels in dB (decibels) are measured on a logarithmic
2 scale, what might seem like a small increase in dB translates into a large receptor sound
3 level increase. On a logarithmic scale, an increase of 3 dB (e.g., from 65 dB to 68 dB)
4 represents a doubling of sound level experienced by the residents in that area.²⁸ Standards
5 promulgated by the U.S. Department of Housing and Urban Development state that
6 “Acceptable” residential day-night average sound levels should not exceed 65 dB.²⁹
7 Federal Aviation Administration regulations describe “compatible land use information” as a
8 function of yearly day-night average sound levels (Ldn) measured in dB. While
9 acknowledging that land use decisions are made by local communities and not by the FAA,
10 the regulations provide a general compatibility standard for residential land uses: “Land
11 Use and related structures are not compatible and should be prohibited” when the sound
12 levels exceed 65 dB.³⁰ U.S. Air Force guidelines discourage residential uses where noise
13 levels reach 65 dB or higher but indicate compatibility may be achieved *indoors only* by
14 constructing significant noise attenuation systems, although this does not address the
15 *outdoor* noise problems at 65 dB and higher.³¹

16
17
18 The Fairchild Joint Land Use Study (“JLUS”) was a collaborative planning effort
19 involving residents of the local communities, federal officials, business owners, and the
20 military to identify compatible land uses and growth management guidelines near Fairchild
21 Air Force Base. The JLUS was intended to protect the military missions and health of the
22 local economies before land use compatibility becomes an issue.³² The JLUS stated in
23 pertinent part:
24
25

26
27 ²⁷ City of Airway Heights Ordinance C-797, Appendix A Map (passed Aug. 5, 2013) [attached as Ex. 1 to
28 Petitioners’ Corrected Prehearing Brief filed Feb. 27, 2014].

29 ²⁸ 24 C.F.R. § 51.103, Appendix I to Subpart B of Part 51 – Definitions of Acoustical Quantities; 14 C.F.R.
30 Part 150, Appendix A to Part 150, Mathematical Descriptions. The Board takes official notice of federal
31 regulations under WAC 242-03-630.

32 ²⁹ 24 C.F.R. § 51.103. Day-night average sound level, abbreviated as DNL and symbolized as Ldn, is the 24-
hour average sound level, in decibels, obtained after addition of 10 decibels to sound levels in the night from
10 p.m. to 7 a.m. 24 C.F.R. § 51.103(a).

³⁰ 14 C.F.R. Part 150, Appendix A to Part 150, Table 1—Land Use Compatibility with Yearly Day-Night
Average Sound Levels.

³¹ Air Installation Compatible Use Zone (AICUZ) Study for Fairchild Air Force Base, Washington, pages 3-5
and 3-9 (2007) [attached as Ex. 1 to Respondent City of Airway Heights Pre-Hearing Brief (May 25, 2014)].

³² Fairchild Joint Land Use Study, p. 2 (2009) [attached as Ex. 8 to Petitioners’ Corrected Prehearing Brief
filed Feb. 27, 2014].

1 One particular development of concern approved prior to the
2 [County's] moratorium is the Deer Creek Apartment complex
3 (Factor 1A) located south of US Highway 2 to the east of Airway
4 Heights. . . Development within Fairchild's critical operations
5 area will limit the ability of the installation to adapt to new
6 missions, to support new/different aircraft, and could jeopardize its
7 long-term viability.³³

8 The Cities of Airway Heights and Spokane, along with Spokane County, were active
9 participants in the JLUS process,³⁴ which found that multi-family residential development at
10 Deer Creek is "within Fairchild's critical operations area" and "will limit" adaptation to new
11 missions and support for new aircraft.

12 The Board notes that JLUS establishes four categories of Military Influence Areas
13 ("MIA"), which are "formally designated geographic planning area[s] where military
14 operations may impact local communities, and conversely, where local activities may affect
15 the military's ability to carry out its mission."³⁵ Military Influence Area 4 (MIA 4) is defined
16 as "having a high potential for noise and safety impacts to which land use controls are
17 appropriate."³⁶ Section 5 of the JLUS recommends *inter alia* certain restrictions within MIA
18 4: "Land currently designated for non-residential use shall not be redesignated to a
19 residential use category. . . . Land currently designated for a residential use shall not be
20 modified to another residential designation that allows a higher density of use than allowed
21 in the current designation. . . ."³⁷ The subject Property lies within MIA 4.³⁸

22 Subsequently the City of Airway Heights, Spokane County, and the City of Spokane
23 entered into an interlocal annexation agreement which contains an agreed definition of
24 "incompatible development." "The term 'incompatible development' means permitted land
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30 ³³ *Id.* at p. 3-14 (emphasis added).

31 ³⁴ *Id.* Acknowledgements; Memorandum of Understanding Regarding Implementation of the Joint Land Use
32 Study for Fairchild Air Force Base (JLUS) (August 2, 2012) [attached as Exhibit 7 to Respondent City of
Airway Heights Pre-Hearing Brief (May 25, 2014)].

³⁵ *Id.* at p. 5-10.

³⁶ *Id.* at p. 5-13.

³⁷ *Id.* at p. 5-59.

³⁸ *Id.* at p. 5-14.

1 uses that are inconsistent with the Fairchild Air Force Base Joint Land Use Study
2 ("JLUS").³⁹

3 Respondent Airway Heights responds to the foregoing evidence by stating: USAF
4 Colonel Neuberry stated the properties were only "potentially" incompatible for multi-
5 residential development; the Commander's letter does not identify an adverse impact to the
6 training or readiness missions of the FAFB; and FAFB's response did not absolutely
7 demand prohibition of multi-family or mixed-use development within the 65-69 LdN range,
8 but rather required the City to attach certain conditions to development, which it has.
9 Airway Heights also asserts the City has multi-family housing deficiency that the
10 Ordinances will help alleviate.⁴⁰

11 According to Airway Heights, the City has a demonstrated deficiency of multi-family
12 housing – these Ordinances require: (1) an evaluation to demonstrate a community need for
13 residential use would not be met if the development were prohibited and there are no viable
14 alternative locations; (2) a noise study demonstrating that 69 LdN is not exceeded over a
15 prescribed period of time; (3) outdoor noise abatement of at least 25 dB with additional
16 consideration for peak noise or vibrations; (4) density of between 10 to 20 units per acre; (5)
17 residential units to be located on the section of property furthest from the operational flight
18 path or runway center line alignment; (6) the owner to sign an aviation easement and a real
19 estate notice with a nuisance covenant waiving liability and damages resulting from noise;
20 and (7) a number of development conditions to include comment and recommendations
21 from FAFB to uphold the purpose and intent of JLUS (C-771 and protect FAFB.⁴¹

22 As owner of a portion of the subject property, Intervenor Brigitta Archer argues the
23 approximately 30 acres affected by these Ordinances is not "adjacent to" the Fairchild AFB
24 and is well outside the boundaries of the Fairchild Accident Protection Zone ("APZ").
25 Intervenor states the Property is also outside the 65 LdN contour line as set by the 2007
26 AICUZ study.⁴² Intervenor further alleges no evidence was presented that this potential infill

31 ³⁹ Interlocal Agreement Regarding Annexations of Portions of the West Plains Urban Growth Area between
32 the City of Spokane, the City of Airway Heights, and Spokane County, p. 9 (Dec. 3, 2009) [attached as Ex. 4
to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

⁴⁰ Respondent City of Airway Heights' Pre-Hearing Brief, p. 22 (Mar. 25, 2014).

⁴¹ *Id.* at pp. 22-23.

⁴² Intervenor Archer's Pre-Hearing Brief – Corrected, p. 12 (Mar. 24, 2014).

1 development, with proper noise attenuation, and appropriately conditioned with aviation
2 easements, deed restrictions and real estate disclosures, will threaten Fairchild's
3 missions.⁴³

4 In reviewing the entire record before the Airway Heights City Council, and now
5 before the Board, the Board finds there are a number of agencies with specialized
6 knowledge and expertise relating to the residential land use/military operations compatibility
7 issues. In particular, significant weight should be given to the comments about noise and
8 aircraft safety hazards which were submitted by Fairchild Air Force Base, Spokane
9 International Airport, and the Federal Aviation Administration. In addition, the 2008 findings
10 of the Spokane County Hearing Examiner, as upheld by the Court of Appeals, must also be
11 given weight regarding compatibility of potential multi-family residential uses in this area
12 since the 2008 denial pertained to a portion of the subject Property.⁴⁴

13 RCW 36.70A.530(3) states an "amendment to a development regulation should not
14 allow development in the vicinity of a military installation that is incompatible with the
15 installation's ability to carry out its mission requirements." Here a Joint Land Use Study was
16 undertaken to determine the parameters for land use in the vicinity of Fairchild. In zones
17 designated MIA 4, increasing the number and density of residential uses was determined to
18 be incompatible with Fairchild's mission and should not be approved.⁴⁵ The subject
19 Property lies within MIA 4.⁴⁶

20 Airway Heights further agreed, in the interlocal annexation agreement, that
21 "incompatible development" means permitted land uses that are inconsistent with the
22 JLUS.⁴⁷ Ordinances C-797 and C-798 potentially allow residential uses in MIA 4 creating
23 an incompatibility with Fairchild's mission in violation of RCW 36.70A.530(3).
24
25
26
27

28 ⁴³ *Id.* at p. 17.

29 ⁴⁴ The Board does not give collateral estoppel effect to the Spokane County Hearing Examiner's findings and
30 conclusions since that 2008 case did not involve the City of Airway Heights, and there is not an identity of
31 parties with the present case. Nevertheless, the 2008 Hearing Examiner findings constitute probative
32 evidence on the issue of land use compatibility.

⁴⁵ Fairchild Joint Land Use Study, pp. 3-14, 5-13, 5-59 (2009) [attached as Ex. 8 to Petitioners' Corrected
Prehearing Brief filed Feb. 27, 2014].

⁴⁶ *Id.* at p. 5-14.

⁴⁷ Interlocal Agreement Regarding Annexations of Portions of the West Plains Urban Growth Area between
the City of Spokane, the City of Airway Heights, and Spokane County, p. 9 (Dec. 3, 2009) [attached as Ex. 4
to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

1 After reviewing all of the evidence in the record, the Board finds there is clear,
2 substantial, and compelling evidence that Ordinances C-797 and C-798 allow development
3 in the vicinity of a military installation that is incompatible with the installation's ability to
4 carry out its mission requirements. The Board is left with a firm and definite conviction that
5 a mistake has been made. Airway Heights Ordinance Nos. C-797 and C-798 are clearly
6 erroneous in view of the entire record before the Board and in light of the goals and
7 requirements of the Growth Management Act. Based on those findings, the Board
8 concludes that Ordinances C-797 and C-798 do not comply with RCW 36.70A.530.
9

10
11 **Issue No. 3:** Did Airway Heights violate the substantive and procedural
12 requirements of RCW 36.70A.510 and RCW 36.70.547 by adopting the
13 Ordinances which authorize the siting of incompatible land uses adjacent to
14 Spokane International Airport ("Airport"), including the requirements for (i) notice
15 and formal consultation with airport owners/managers/ operators and (ii) filing
16 proposed plans with the aviation division of the department of transportation?

17 **Applicable Law**

18 RCW 36.70A.510 states "[a]doption and amendment of comprehensive plan
19 provisions and development regulations under this chapter affecting a general aviation
20 airport are subject to RCW 36.70.547." RCW 36.70.547 provides:

21 Every county, city, and town in which there is located a general
22 aviation airport that is operated for the benefit of the general
23 public, whether publicly owned or privately owned public use,
24 shall, through its comprehensive plan and development
25 regulations, discourage the siting of incompatible uses adjacent to
26 such general aviation airport. Such plans and regulations may
27 only be adopted or amended after formal consultation with: Airport
28 owners and managers, private airport operators, general aviation
29 pilots, ports, and the aviation division of the department of
30 transportation. All proposed and adopted plans and regulations
31 shall be filed with the aviation division of the department of
32 transportation within a reasonable time after release for public
consideration and comment. Each county, city, and town may
obtain technical assistance from the aviation division of the
department of transportation to develop plans and regulations
consistent with this section.

1 Any additions or amendments to comprehensive plans or
2 development regulations required by this section may be adopted
3 during the normal course of land-use proceedings.

4 This section applies to every county, city, and town, whether
5 operating under chapter 35.63, 35A.63, 36.70, [or] 36.70A RCW,
6 or under a charter.⁴⁸

7 **Board Analysis**

8 RCW 36.70.547 states that every county and city shall, through its comprehensive
9 plan and development regulations, discourage the siting of *incompatible* uses adjacent to a
10 general aviation airport. The Board must determine whether Petitioners have adduced
11 sufficient facts and evidence to satisfy Petitioners' burden of proof to show that Ordinances
12 C-797 and C-798 fail to discourage the siting of incompatible uses adjacent to Spokane
13 International Airport.
14

15 Petitioners allege that adoption of the Ordinances violated RCW 36.70A.510 and
16 RCW 36.70.547. RCW 36.70.547 requires cities, through comprehensive plans and
17 development regulations, to discourage the siting of incompatible land uses adjacent to
18 general aviation airports, and further provides that such plans and regulations may only be
19 adopted or amended after formal consultation with airport owners and managers, and the
20 aviation division of the department of transportation. In a 2006 case, the Central Puget
21 Sound Growth Management Hearings Board held:
22

23 It is clear that the provisions of RCW 36.70A.510 and RCW
24 36.70.547 provide explicit statutory direction for local governments
25 to give substantial weight to WSDOT Aviation Division's comments
26 and concerns related to matters affecting safety at general aviation
27 airports. . . . Likewise, the FAA's expertise and decades of
28 experience, as reflected in FAR Part 77, cannot be summarily
29 ignored. Both these agencies have statutory authority to inject their
30 substantial experience and expertise into local governmental
31 matters involving airport safety.

32 *Pruitt v. Town of Eatonville*, CPSGMHB Case No. 06-3-0016, FDO, at 10 (Dec. 18, 2006).

In *Pruitt*, FAA and WSDOT Aviation Division commented on the Town's proposed
development regulations, noting flaws which related to incompatible uses, and offered

⁴⁸ Emphasis added.

1 recommendations to correct the noted deficiencies. These comments were available to the
2 Town Council prior to taking action on the development regulations; yet no changes were
3 made to address the comments. Without any technical support in its record, the Town
4 simply adopted the proposed regulations without further revision or amendment. *Id.*, at 16.
5 The Board found the Town failed to comply with RCW 36.70A.510.

6
7 In the present case, comments from FAA and WSDOT regarding additional
8 residential housing on the Property are in the record. FAA's comments, provided in full
9 above, identify apartment development as "an incompatible land use" to the two airports,
10 SIA and FAFB.⁴⁹ WSDOT reviewed the proposed Ordinances, provided specific comments
11 in a series of letters relating to compatibility issues, and encouraged Airway Heights to
12 honor the request by Fairchild's Base Commander not to allow residential uses on the
13 Property.
14

15 **Greater Spokane Incorporated:**

16
17 We are greatly concerned that isolated decisions, such as the one
18 under consideration, are being made without adequate
19 consideration of long term impacts. Just as was noted by
20 Fairchild Air Force Base in their previously delivered comments,
21 we believe this property "will be susceptible to aircraft noise for
22 the foreseeable future." We also concur with Spokane
23 International Airport, who has repeatedly voiced concern about
24 the impact this project will have on both its current and future
25 operations. . . . The FAA, too, has provided strong language
26 citing its opinion that this project is "incompatible land use." . . .
27 We believe that allowing this incompatible use to proceed will
28 create a precedent that will significantly complicate future actions
29 to prevent encroachment. Fairchild Air Force base and Spokane
30 International Airport are simply too important to allow them to be
31 "boxed in."⁵⁰
32

⁴⁹ Email comments from Spokane International Airport Director submitted to Spokane County Hearing Examiner, including comments from FAA Regional Office (April 18, 2008; emphasis added) [attached as Ex. 6 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

⁵⁰ Letter from Greater Spokane Inc. to Spokane Dept. of Building and Planning (April 18, 2008; emphasis added) [attached as Ex. 7 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

1 **Washington State Department of Transportation, Aviation**
2 **Division:**

3 The following is a general summary of WSDOT's concerns and
4 observations discussed during Airway Heights July 3, 2013 formal
5 consultation meeting:

6

7 • For local military airport land use compatibility planning,
8 WSDOT recommends that the City of Airway Heights refer to
9 Fairchild's Joint Land use Study (JLUS), September 2009.

10 • For technical assistance regarding military airport land use
11 compatibility planning, WSDOT strongly recommends staff refer to
12 correspondence provided by USAF Colonel Brian Newberry.

13

14 • The Deer Creek site is in close proximity to SIA's planned
15 parallel runway.

16 • WSDOT does not support the encroachment of residential
17 development adjacent to Spokane International Airport (SIA).

18 • Residential development on the Deer Creek site will be
19 impacted from a variety of aviation activities. Such activities may
20 include, but are not limited to, noise, light, vibration, odors, hours
21 of operation, low overhead flights and other associated activities.

22 The importance of SIA to the region and the state's transportation
23 system and economy cannot be overstated. It is critical that every
24 effort be made to discourage incompatible land uses that impair
25 the airport's ability to operate as an essential public facility.⁵¹

26 In an earlier email, WSDOT indicated: "Multifamily development would be
27 inconsistent with WSDOT's *Airports and Compatible Land Use Guidebook*, January 2011.
28 Residential development within zone 6 of airport overlay is generally incompatible."⁵²

29 In addition, Spokane International Airport's Director outlined the Airport's concerns
30 about the proposed Ordinances in a series of letters:

31
32 ⁵¹ Letter from Washington State Department of Transportation Aviation Planner to Airway Heights City
Planner (July 12, 2013; underlining added) [attached as Ex. 12 to Petitioners' Corrected Prehearing Brief filed
Feb. 27, 2014].

⁵² Email from Washington State Department of Transportation to Airway Heights City Planner (November 7,
2011; emphasis added) [attached as Ex. 13 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

1 As part of the approval process for these proposed amendments,
2 the City of Airway Heights should provide specific evidence as to
3 how the proposed amendments are consistent with ... the Master
4 Plan for Spokane International Airport (Airport). . . .

5 Adopting zoning that permits residential use within close proximity
6 to the Airport may ultimately create situations requiring preventive
7 or remedial mitigation actions to ensure that the ability of the Airport
8 to develop and operate without limitations is not hindered. . . .

9 The area of C-2 that is located in the vicinity of Deer Heights Road
10 is cause for concern that this may present an incompatible land
11 use related to the future parallel runway. . . .⁵³

12 The Court of Appeals underscored this concern:

13 Findings of fact also establish that a multifamily development on
14 the Deer Creek site would adversely impact the layout, length,
15 and orientation of a proposed runway for SIA and will jeopardize
16 current and future SIA operations.⁵⁴

17 RCW 36.70.547 requires that each county, city, or town where a general aviation
18 airport is located “shall, through its comprehensive plan and development regulations,
19 discourage the siting of incompatible uses adjacent to such general aviation airport.”⁵⁵
20 Here Airway Heights amended its development regulations to allow residential uses
21 conditionally in the commercially-zoned area despite clear comments from SIA and
22 WSDOT that residential development in the area would be incompatible with SIA’s current
23 operations and planned expansion. Ordinances C-797 and C-798 would allow incompatible
24 development in violation of RCW 36.70.547.
25

26 After reviewing all of the evidence in the record, the Board finds there is clear,
27 substantial, and compelling evidence that Ordinances C-797 and C-798 allow the siting of
28 incompatible development adjacent to a general aviation airport. The Board is left with a
29
30

31 ⁵³ Letter from Spokane International Airport to Airway Heights City Planner, pp. 1-2 (May 9, 2013; emphasis
32 added) [attached as Ex. 14 to Petitioners’ Corrected Prehearing Brief filed Feb. 27, 2014].

⁵⁴ *Deer Creek*, 157 Wn. App. at 17.

⁵⁵ RCW 36.70.547 requires formal consultation with airport owners and managers prior to adoption of plans and regulations. The record reflects consultation by Airway Heights with SIA prior to adopting the challenged Ordinances.

1 firm and definite conviction that a mistake has been made. Airway Heights Ordinance Nos.
2 C-797 and C-798 are clearly erroneous in view of the entire record before the Board and in
3 light of the goals and requirements of the Growth Management Act. Based on those
4 findings, the Board concludes that Ordinances C-797 and C-798 do not comply with RCW
5 36.70.547.
6

7 **Issue No. 4:** Did Airway Heights fail to comply with the substantive and
8 procedural requirements of the State Environmental Policy Act ("SEPA"),
9 as set forth in Chapter 43.21C RCW and its implementing regulations, by
10 failing to properly identify, disclose, analyze, or mitigate known or probable
11 impacts associated with the approval of the Ordinances?

12 Issue 4 was withdrawn by Petitioners.⁵⁶

13 **Issue No. 5:** Did Airway Heights fail to comply with GMA's prohibition
14 against adoption of comprehensive plan and zoning decisions that may
15 preclude the siting or expansion of essential public facilities in violation of
16 RCW 36.70A.200(5)?

17 **Applicable Law**

18 RCW 36.70A.200(5) states: "No local comprehensive plan or development
19 regulation may preclude the siting of essential public facilities."
20

21 **Board Analysis**

22 Washington law prohibits the adoption of a comprehensive plan or development
23 regulation that precludes siting of an essential public facility ("EPF"). RCW 36.70A.200(5).
24 "Essential public facilities," as defined in the statute, "include those facilities that are
25 typically difficult to site, such as airports." RCW 36.70A.200(1). Both the courts and the
26 Board interpret RCW 36.70A.200(5) to apply to expansions of essential public facilities.
27

28 [A] local government plan may not . . . effectively preclude the
29 siting or expansion of an [essential public facility], including its
30 necessary support activities.

31 *Port of Seattle v. City of Des Moines*, CPSGMHB Case No.97-3-0014, Final Decision and
32 Order, (August 13, 1997). As the Board stated in *Port of Seattle*, the City's plan need not

⁵⁶ Petitioners' Reply Brief, p. 14 (April 2, 2014).

1 make it impossible to build the third runway but violates the GMA if it makes planned
2 expansion impracticable.⁵⁷

3 In *City of Des Moines v. Puget Sound Regional Council*, 98 Wn. App. 23, 988 P.2d
4 27 (1999), the Court of Appeals ruled that Des Moines's plan policies designed to stop
5 trucks moving fill dirt through city streets in order to prevent SeaTac Airport's third runway
6 construction violated RCW 36.70A.200. The Court's ruling established that the GMA duty
7 not to preclude the siting of essential public facilities extended to EPFs beyond the city's
8 boundaries and prohibited city plans or regulations that would preclude expansion of the
9 EPF or impede support activities necessary to that expansion.

11 City regulations may not impede airport operations. In *Concerned Citizens Against*
12 *Runway Expansion v. City of Anacortes*, WWGMHB Case No. 01-2-0019, Final Decision
13 and Order (December 12, 2001), the Board ruled the city failed to comply with RCW
14 36.70A.200 when it assigned Port property a residential zone that precluded buildings and
15 uses essential to airport operations, such as hangars.

17 The importance of the air base and airport to the region and the threat created by
18 allowance of adjacent residential development is well stated by Greater Spokane
19 Incorporated:

20 Fairchild Air Force Base and Spokane International Airport are
21 critical assets for the economic growth of our region. Fairchild is
22 our largest employer and represents an economic impact
23 approaching \$1 billion for our community. Spokane International
24 Airport, too, is vital [to] our region and, perhaps, the single most
25 important asset for continued economic growth. Both operations
26 must be protected and strategically managed to ensure optimum
27 flexibility in operations today and going forward. . . . We have
28 seen too many examples of where the Air Force has curtailed
29 flying operations at other bases simply due to volume of noise
30 complaints from the community. For that reason, encroachment of
31 residential development around flying operations is viewed by
32 base closure and realignment commissions as a principal factor
when considering closure of a facility.⁵⁸

⁵⁷ See also, Compliance Order (April 20, 1998).

⁵⁸ Letter from Greater Spokane Inc. to Spokane Dept. of Building and Planning (April 18, 2008; emphasis added) [attached as Ex. 7 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

1 The parties acknowledge that Fairchild Air Force Base and Spokane International
2 Airport are Essential Public Facilities.

3 The parties acknowledge and agree that the Base and Spokane
4 International Airport ("SIA") are two of the region's most essential
5 public facilities and that the parties should cooperate to
6 discourage development that is incompatible with either facilities'
7 operational needs and/or its ability to carry out its current and/or
8 future missions ("incompatible development").⁵⁹

9 The question is whether Petitioners have adduced sufficient facts and evidence to
10 satisfy Petitioners' burden of proof to show that Ordinances C-797 and C-798 preclude
11 expansion of the operations or missions of Fairchild Air Force Base or Spokane
12 International Airport.

13 Petitioners argue that comments from Fairchild, WSDOT, and SIA, which are
14 consistent with JLUS, indicate that the Ordinances authorize development that will limit the
15 ability of both essential public facilities to adapt to future needs and missions. The Board
16 has previously found the Ordinances impair present and future operations of Fairchild Air
17 Force Base.⁶⁰ As for Spokane International Airport, WSDOT states:

18
19 The importance of SIA to the region and the state's transportation
20 system and economy cannot be overstated. It is critical that every
21 effort be made to discourage incompatible land uses that impair
22 the airport's ability to operate as an essential public facility.⁶¹

23 The *Deer Creek* Court noted:

24 Findings of fact establish that a multi-family development on the
25 Deer Creek site would adversely impact the layout, length and
26 orientation of a proposed runway for SIA and will jeopardize
27 current and future SIA operations.⁶²

28 WSDOT commented on these Ordinances:
29
30

31 ⁵⁹ Memorandum of Understanding Regarding Implementation of the Joint Land Use Study for Fairchild Air
32 Force Base (JLUS), p. 1 (August 2, 2012) [attached as Ex. 7 to Respondent City of Airway Heights Pre-
Hearing Brief (May 25, 2014)].

⁶⁰ See Legal Issue 1.

⁶¹ Letter from Washington State Department of Transportation to Airway Heights City Planner (July 12, 2013;
emphasis added) [attached as Ex. 12 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

⁶² *Deer Creek*, 157 Wn. App. at 17-18.

1 The Deer Creek site is in close proximity to SIA's planned parallel
2 runway. WSDOT does not support the encroachment of
3 residential development adjacent to Spokane International
4 Airport.⁶³

5 Spokane International Airport commented on the proposed ordinances, stating Airway
6 Heights "should provide specific evidence as to how the proposed amendments are
7 consistent with ... the Master Plan for Spokane International Airport." The Airport said:

8 The area of C-2 that is located in the vicinity of Deer Heights Road
9 is cause for concern that this may present an incompatible land
10 use related to the future parallel runway.⁶⁴

11 In discussing the existing Deer Creek Apartment complex as a "development of
12 concern approved prior to the moratorium," the JLUS states in pertinent part: "Development
13 within Fairchild's critical operations area will limit the ability of the installation to adapt to
14 new missions, to support new/different aircraft, and could jeopardize its long-term
15 viability."⁶⁵

16
17 RCW 36.70A.200(5) prohibits the adoption of plans or development regulations that
18 "preclude the siting of essential public facilities," including, by implication, their operations
19 or expansion. Here Airway Heights amended its development regulations to allow
20 residential uses conditionally in the commercially-zoned area despite directions from SIA
21 and WSDOT that residential development in the area would jeopardize SIA's planned
22 parallel runway. Ordinances C-797 and C-798 allow incompatible development that
23 precludes operation and expansion of an essential public facility in violation of RCW
24 36.70A.200(5).
25

26 After reviewing all of the evidence in the record, the Board finds there is clear,
27 substantial, and compelling evidence that Ordinances C-797 and C-798 preclude the siting
28 of two essential public facilities, Fairchild Air Force Base and Spokane International Airport,
29 by jeopardizing their future operations and expansion. The Board is left with a firm and
30

31
32 ⁶³ Letter from Washington State Department of Transportation to Airway Heights City Planner (July 12, 2013; emphasis added) [attached as Ex. 12 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

⁶⁴ Letter from Spokane International Airport to Airway Heights City Planner, p. 2 (May 9, 2013; emphasis added) [attached as Ex. 14 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

⁶⁵ Fairchild Joint Land Use Study, p. 3-14 (2009) [attached as Ex. 8 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

1 definite conviction that a mistake has been made. Airway Heights Ordinance Nos. C-797
2 and C-798 are clearly erroneous in view of the entire record before the Board and in light of
3 the goals and requirements of the Growth Management Act. Based on those findings, the
4 Board concludes that Ordinances C-797 and C-798 do not comply with RCW 36.70A.200(5).

5
6 **Issue No. 6:** Did Airway Heights violate RCW 36.70A.010's requirement
7 for local cooperation and coordination in comprehensive land use planning
8 by approving Ordinances C-797 and C-798?

9
10 **Applicable Law**

11 RCW 36.70A.010 states the following Legislative Findings:

12
13 The legislature finds that uncoordinated and unplanned growth,
14 together with a lack of common goals expressing the public's
15 interest in the conservation and the wise use of our lands, pose a
16 threat to the environment, sustainable economic development,
17 and the health, safety, and high quality of life enjoyed by residents
18 of this state. It is in the public interest that citizens, communities,
19 local governments, and the private sector cooperate and
20 coordinate with one another in comprehensive land use planning.
21 Further, the legislature finds that it is in the public interest that
22 economic development programs be shared with communities
23 experiencing insufficient economic growth.

24
25 **Board Analysis**

26 RCW 36.70A.010 contains general legislative findings which provide guidance but do
27 not, standing alone, create enforceable duties binding on cities and counties.⁶⁶ Therefore,
28 the Board dismisses Issue 6.

29
30 **Issue No. 7:** Did Airway Heights violate RCW 36.70A.100s requirement
31 for regional coordination and consistency by approving the Ordinances
32 which weaken the protections provided to Fairchild and the Airport in the
comprehensive plans adopted by Spokane County and the City of
Spokane?

⁶⁶ *Edward Coyne and West Richland Citizens for Smart Growth v. City of Richland*, GMHB 13-1-0005, Final Decision and Order (March 5, 2014), at p. 15. See also, *Keesling v. King County*, GMHB 05-3-0001, Final Decision and Order (July 5, 2005), at p. 27; *North Clover Creek v. Pierce County*, GMHB 10-3-0003c, Final Decision and Order (August 2, 2010), at p. 8.

1 **Applicable Law**

2 RCW 36.70A.100 provides:

3
4 The comprehensive plan of each county or city that is adopted
5 pursuant to RCW 36.70A.040 shall be coordinated with, and
6 consistent with, the comprehensive plans adopted pursuant to
7 RCW 36.70A.040 of other counties or cities with which the county
or city has, in part, common borders or related regional issues.

8 **Board Analysis**

9
10 JLUS prohibits the designation of additional residential uses on the Property:

- 11 - Land currently designated for non-residential use shall not be
12 redesignated to a residential use category. It may be
13 redesignated to another non-residential use category (except for
14 mixed use) as long as conditions of approval restrict the
15 intensity of development allowed . . .
16
17 - Land currently designated for a residential use shall not be
18 modified to another residential designation that allows a higher
density of use than allowed in the current designation.⁶⁷

19 Both the City and County of Spokane have adopted comprehensive plan and
20 development regulations provisions to implement this JLUS restriction.⁶⁸

21 In particular, the City of Spokane amended its comprehensive plan to provide as
22 follows:

23
24 **LU 11.4 Restrict Residential Uses**

25 Future Comprehensive Plan amendments and zone
26 reclassifications within MIA 3/4 that would increase residential
27 densities, geographically expand residential zones, establish new
28 residential designation, change an existing commercial or
29 industrial designation to a residential designation or allow
residential uses in a commercial or industrial zones shall not be
considered.⁶⁹

30
31 ⁶⁷ Fairchild Joint Land Use Study, p. 5-59 (2009; emphasis added) [attached as Ex. 8 to Petitioners' Corrected
32 Prehearing Brief filed Feb. 27, 2014].

⁶⁸ City of Spokane Ordinances C34850, C34851, and C34852 (Effective April 30, 2012) [attached as Ex. 19 to
Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014]; Spokane County JLUS Findings of Fact and
Decision (May 1, 2012) [attached as Ex. 20 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

⁶⁹ City of Spokane Ordinance C34850, p. 8 (Effective April 30, 2012) [attached as Ex. 19 to Petitioners'
Corrected Prehearing Brief filed Feb. 27, 2014].

1 “New residential zones are prohibited.”⁷⁰ Spokane County also prohibits new
2 residential zones.⁷¹

3 Petitioners argue that in contrast to these restrictions adopted by the City and
4 County of Spokane as part of the regional JLUS process, Airway Heights’ Ordinances
5 authorize additional high density residential uses in an area that is sensitive to the current
6 and future operations of Fairchild and SIA in violation of GMA’s regional coordination and
7 consistency requirements.
8

9 Notwithstanding the apparent inconsistency of the challenged Ordinances with the
10 comprehensive plans of the City and County of Spokane, the Board cannot find a violation
11 of RCW 36.70A.100. RCW 36.70A.100 requires comprehensive plans to be consistent with
12 the plans of adjacent cities and counties. Here, the challenged Ordinances do not amend
13 the Airway Heights Comprehensive Plan. The adoption of development regulations does
14 not fall within the scope of this statutory provision. Therefore, Legal Issue 7 must be
15 dismissed.
16

17 VI. FINDINGS AND CONCLUSIONS

18 Board Findings of Fact

19 The Growth Management Hearings Board finds clear, substantial, and compelling
20 evidence in the record as follows:
21

22 1. Ordinance Nos. C-797 and C-798 modified the land use designations and
23 development regulations affecting approximately 29-30 acres of land within the City of
24 Airway Heights, Washington, and located several hundred feet south of State Route
25 Highway 2, east of Hayford Road, and west of Deer Heights Road.
26

27 2. The Airway Heights C-2 zone is a land use classification that allows for general
28 commercial uses, as a conditional use, including *inter alia* Multi-Family Residential as part
29 of an approved mixed-use development plan and Multi-Family Residential with a density
30 range of 10-20 units per acre on the affected property.
31

32 ⁷⁰ City of Spokane Ordinance C34852, p. 11 (Effective April 30, 2012) [attached as Ex. 19 to Petitioners’
Corrected Prehearing Brief filed Feb. 27, 2014].

⁷¹ Spokane County Findings of Fact and Decision (May 1, 2012), Fairchild Air Force Base Overlay Zone, p. 12
[attached as Ex. 20 to Petitioners’ Corrected Prehearing Brief filed Feb. 27, 2014].

1 3. The Multi-Family Residential development authorized by Ordinance Nos. C-797
2 and C-798 allows an increase in the number and density of residential uses in the vicinity of
3 Fairchild Air Force Base and near Spokane International Airport.

4 4. An increase in the number and density of residential uses in the vicinity of
5 Fairchild Air Force Base and near Spokane International Airport has a high potential for
6 adverse noise and safety impacts.

7 5. High density residential development would be incompatible with aircraft approach
8 and departure operations and would jeopardize the future viability of Fairchild Air Force
9 Base and Spokane International Airport.

10 6. The property affected by Ordinance Nos. C-797 and C-798 is located within
11 Fairchild Air Force Base's critical operations area designated Military Influence Area 4.

12 7. The Multi-Family Residential development authorized by Ordinance Nos. C-797
13 and C-798 will affect current Air Force operations and will limit the ability of Fairchild Air
14 Force Base to adapt to new missions, support new/different aircraft, and could jeopardize
15 the Base's long-term viability.

16 8. The Multi-Family Residential development authorized by Ordinance Nos. C-797
17 and C-798 will limit the ability of Spokane International Airport to construct and operate a
18 future parallel runway.

19 9. The Multi-Family Residential development authorized by Ordinance Nos. C-797
20 and C-798 is incompatible with current and future operations of Fairchild Air Force Base
21 and Spokane International Airport.

22 10. Fairchild Air Force Base and Spokane International Airport are Essential Public
23 Facilities.

24
25
26
27
28 **Board Conclusions of Law**

29 1. Ordinance Nos. C-797 and C-798 allow development in the vicinity of Fairchild Air
30 Force Base that is incompatible with the Air Force Base's ability to carry out its mission
31 requirements.

32 2. Ordinance Nos. C-797 and C-798 fail to comply with RCW 36.70A.530.

1 3. Ordinance Nos. C-797 and C-798 fail to discourage the siting of incompatible
2 uses adjacent to Spokane International Airport.

3 4. Ordinance Nos. C-797 and C-798 fail to comply with RCW 36.70A.510 and RCW
4 36.70.547.

5 5. Ordinance Nos. C-797 and C-798 preclude the siting of essential public facilities.

6 6. Ordinance Nos. C-797 and C-798 fail to comply with RCW 36.70A.200.

7 7. Ordinance Nos. C-797 and C-798 are clearly erroneous in view of the entire
8 record before the Board and in light of the goals and requirements of the Growth
9 Management Act.
10

11 **VII. DETERMINATION OF INVALIDITY**

12 RCW 36.70A.302(1) provides:

13 1) A board may determine that part or all of a comprehensive plan
14 or development regulations are invalid if the board:

15 (a) Makes a finding of noncompliance and issues an order of
16 remand under RCW 36.70A.300;

17 (b) Includes in the final order a determination, supported by
18 findings of fact and conclusions of law, that the continued validity
19 of part or parts of the plan or regulation would substantially
20 interfere with the fulfillment of the goals of this chapter; and

21 (c) Specifies in the final order the particular part or parts of the
22 plan or regulation that are determined to be invalid, and the
23 reasons for their invalidity.
24

25 A determination of invalidity can only be issued if the Board finds adoption of
26 Ordinance Nos. C-797 and C-798 fails to comply with the GMA and that continued validity
27 of the ordinances would substantially interfere with the fulfillment of the GMA's goals. RCW
28 36.70A.302(1)(b).
29

30 The Board has previously held that a request for invalidity is a prayer for relief and, as
31 such, does not need to be framed in the petition for review or separately briefed as a legal
32

1 issue.⁷²

2 [T]he Board has authority to consider invalidity *sua sponte*
3 regardless of whether or not a party raises it during the proceeding.⁷³

4 A determination of invalidity must be based on a finding that continued validity of a
5 City's action "would substantially interfere with the fulfillment of the goals of [the GMA]."
6 Petitioners here have provided ample evidence of the pressure to vest development rights
7 to multi-family residential development on the Property. A development proposal for Deer
8 Creek was actively pursued through the courts. The City enacted a series of moratoria to
9 forestall development while zoning regulations were considered. The Board finds continued
10 validity of the City's Ordinances is likely to result in development vesting which would
11 render GMA planning procedures ineffectual or moot. If such project vesting were to occur,
12 the remand of this case to the City would be meaningless and there would be no
13 practicable way to address GMA compliance.
14

15 GMA Planning Goals are set forth in RCW 36.70A.020. Goals 3, 5, and 11
16 are stated as follows:
17

18 (3) Transportation. Encourage efficient multimodal transportation
19 systems that are based on regional priorities and coordinated with
20 county and city comprehensive plans.

21 (5) Economic development. Encourage economic development
22 throughout the state that is consistent with adopted
23 comprehensive plans, promote economic opportunity for all
24 citizens of this state, especially for unemployed and
25 disadvantaged persons, promote the retention and expansion of
26 existing businesses and recruitment of new businesses, recognize
27 regional differences impacting economic development
28 opportunities, and encourage growth in areas experiencing
29 insufficient economic growth, all within the capacities of the state's
30 natural resources, public services, and public facilities.

31 (11) Citizen participation and coordination. Encourage the
32 involvement of citizens in the planning process and ensure

⁷² *Citizens for Responsible Development v. Snohomish County*, CPSGMHB Case No. 03-3-0013, Final Decision and Order (Dec. 8, 2003), at 5; *Friends of the San Juans v. San Juan County*, WWGMHB Case No. 10-2-0012, Final Decision and Order (Oct. 12, 2010), at 34-35.

⁷³ *King County v. Snohomish County*, CPSGMHB Case No. 03-3-0013, Final Decision and Order (Oct. 13, 2003), at 18.

1 coordination between communities and jurisdictions to reconcile
2 conflicts.

3 **Goal 3 Transportation**

4 The record in this case demonstrates the primacy of Spokane International Airport in
5 providing air transportation for the Eastern Washington region. As Greater Spokane
6 Incorporated noted: "Spokane International Airport is vital to our region and perhaps the
7 single most important asset for continued economic growth."⁷⁴ WSDOT Aviation Division
8 commented:
9

10 The importance of SIA to the region and the state's transportation
11 system and economy cannot be overstated. It is critical that every
12 effort be made to discourage incompatible land uses that impair
13 the airport's ability to operate as an essential public facility.⁷⁵

14 In *Port of Seattle v. City of Des Moines*, CPSGMHB Case No. 97-3-0014, Final
15 Decision and Order (Aug. 13, 1977), city enactments of policies that restricted the ability of
16 SeaTac to build its third runway in violation of RCW 36.70A.200(5) were found to
17 substantially interfere with the fulfillment of Goal 3 because they frustrated regional
18 priorities and failed to coordinate with comprehensive plans of the county and other cities.
19

20 Similarly here, because the Airway Heights Ordinances interfere with the SIA third-
21 runway expansion, the regional transportation priorities and coordinated planning
22 represented by the JLUS and Interlocal Annexation Agreement are frustrated.
23

24 **Invalidity Findings of Fact:**

- 25 • The residential development allowed by the Ordinances is incompatible with
26 regional transportation priorities and coordinated planning to support the present and
27 future operations of Fairchild Air Force Base and Spokane International Airport.
28

29 **Invalidity Conclusions of Law:**

- 30 • Continued validity of the Ordinances would substantially interfere with the
31
32

⁷⁴ Letter from Greater Spokane Inc. to Spokane Dept. of Building and Planning (April 18, 2008; emphasis added) [attached as Ex. 7 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

⁷⁵ Letter from Washington State Department of Transportation to Airway Heights City Planner (July 12, 2013; emphasis added) [attached as Ex. 12 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

1 fulfillment of GMA Goal 3, Transportation.

2
3 **Goal 5 Economic Development**

4 Petitioners have provided substantial evidence that multifamily development on the
5 Property as contemplated by the Ordinances will frustrate Goal 5. The air force base and
6 airport are significant components of the region's economy, and residential development in
7 that location is incompatible with their operations over the long term.

8 The JLUS states Fairchild AFB is "extremely important to the Spokane County
9 economy," with a direct employment payroll of \$215 million, creation of over 2,000 indirect
10 jobs, and an economic impact to the community of over \$420 million in 2007.⁷⁶ Spokane
11 International Airport is equally essential. As summarized by Greater Spokane Incorporated:

12
13 Fairchild Air Force Base and Spokane International Airport are
14 critical assets for the economic growth of our region. Fairchild is
15 our largest employer and represents an economic impact
16 approaching \$1 billion for our community. Spokane International
17 Airport, too, is vital [to] our region and, perhaps, the single most
18 important asset for continued economic growth. Both operations
19 must be protected and strategically managed to ensure optimum
flexibility in operations today and going forward.⁷⁷

20 Airway Heights acknowledged the importance of Fairchild and SIA to the region in the
21 Interlocal Annexation Agreement:

22 Spokane [City], Airway Heights and the County acknowledge and
23 agree that the Spokane International Airport and Fairchild Air
24 Force Base are two of the region's most essential public facilities
25 and that neither of the parties should allow development in the
26 vicinity of either facility that is incompatible with the facilities'
27 operational needs and/or its ability to carry out its current and/or
28 future missions ("incompatible development"). The term
29 "incompatible development" means permitted land uses that are
inconsistent with the Fairchild Air Force Base Joint Land Use
Study ("JLUS"). . . .⁷⁸

30
31 ⁷⁶ Fairchild Joint Land Use Study, p. 4 (2009) [attached as Ex. 8 to Petitioners' Corrected Prehearing Brief
32 filed Feb. 27, 2014].

⁷⁷ Letter from Greater Spokane Inc. to Spokane Dept. of Building and Planning (April 18, 2008; emphasis
added) [attached as Ex. 7 to Petitioners' Corrected Prehearing Brief filed Feb. 27, 2014].

⁷⁸ Interlocal Agreement Regarding Annexations of Portions of the West Plains Urban Growth Area between
the City of Spokane, the City of Airway Heights, and Spokane County, p. 9 [attached as Ex. 4 to Petitioners'
Corrected Prehearing Brief filed Feb. 27, 2014].

1 The JLUS concludes residential development is incompatible with FAFB operations
2 in MIA 4 zones, where the Property is located. Thus the Ordinances, by allowing multi-
3 family housing as a conditional use, expose Fairchild to incompatible uses, thus interfering
4 with the GMA Goal of economic development for the region. Similarly, exposing the Airport
5 to incompatible development in the vicinity of its proposed parallel runway threatens the
6 economic growth of the region.
7

8 **Invalidity Findings of Fact:**
9

- 10 • Fairchild Air Force Base and Spokane International Airport are essential to
11 the economic development and growth of Eastern Washington.
- 12 • Allowing encroachment of residential development will reduce flexibility in
13 airport and air base operations and jeopardize long-term viability of the facilities.
14

15 **Invalidity Conclusions of Law:**
16

- 17 • Continued validity of the Ordinances would substantially interfere with the
18 fulfillment of Goal 5, Economic Development.

19 **Goal 11 “Ensure coordination between communities and jurisdictions to reconcile
20 conflicts.”**
21

22 Petitioners have provided substantial evidence that the Ordinances frustrate a multi-
23 year coordination effort to reconcile conflicting agendas for development in the vicinity of
24 the Property. The County, City of Spokane, City of Airway Heights, FAFB, SIA, Greater
25 Spokane Incorporated (representing business), neighborhood associations, Spokane and
26 Kalispell Tribes and others spent months collaboratively preparing the Fairchild Joint Land
27 Use Study (JLUS) completed in September 2009. The JLUS concluded high-density
28 residential development is an incompatible use in MIA 4 zones.
29

30 Then in August 2012, Spokane County, City of Spokane, City of Airway Heights
31 and Spokane International Airport executed an Interlocal Annexation Agreement
32 reaffirming the mutual commitments to amend the respective plans and regulations to

1 prevent incompatible development as defined in the JLUS – *i.e.*, high-density residential
2 in MIA 4 zones. Nevertheless, Airway Heights adopted the Ordinances allowing high
3 density residential development as a conditional use in an MIA 4 zone.
4

5 **Invalidity Findings of Fact:**

- 6
 - By adopting the Ordinances, Airway Heights abandoned and frustrated the
7 coordinated planning developed through the JLUS and affirmed in the Interlocal
8 Annexation Agreement.
9

10 **Invalidity Conclusions of Law:**

- 11
 - Continued validity of the Ordinances frustrates Goal 11 by interfering with the
12 fulfillment of cooperative planning among jurisdictions and communities to protect
13 the operations of FAFB and SIA.
14

15
16 The Board has determined that Ordinance Nos. C-797 and C-798 failed to comply
17 with the GMA and has remanded this matter to the City to achieve compliance under RCW
18 36.70A.300. The Board hereby finds and concludes that the continued validity of
19 Ordinance Nos. C-797 and C-798 would substantially interfere with the fulfillment of the
20 GMA Planning Goals 3, 5, and 11.
21

22 **Conclusion**

23 Based upon the foregoing Invalidity Findings of Fact and Invalidity Conclusions of
24 Law, the Board determines that the continued validity of Ordinances C-797 and C-798
25 would substantially interfere with the fulfillment of the goals of the GMA in RCW 36.70A.020
26 (3), (5) and (11). Therefore, the Board issues a Determination of Invalidity as to Airway
27 Heights Ordinance Nos. C-797 and C-798.
28
29

30 **VIII. ORDER**

31 The City of Airway Heights is not in compliance with the requirements of the Growth
32 Management Act set forth in RCW 36.70A.530, RCW 36.70A.510, RCW 36.70.547, and

RCW 36.70A.200. The Board remands Ordinance Nos. C-797 and C-798 to the City of Airway Heights for the purpose of coming into compliance with the Growth Management Act. A Determination of Invalidity is entered as to Airway Heights Ordinance Nos. C-797 and C-798. Legal Issues 4, 6, and 7 are dismissed. The following schedule for further proceedings shall apply:

Item	Date Due
Compliance Due	November 3, 2014
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	November 17, 2014
Objections to a Finding of Compliance	December 1, 2014
Response to Objections	December 11, 2014
Compliance Hearing Location to be determined	December 18, 2014 10:00 a.m.

DATED this 6th day of June, 2014.

Raymond L. Paolella, Presiding Officer

Charles Mosher, Board Member

Margaret Pageler, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.⁷⁹

⁷⁹ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. **A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.**